

Conference Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 325

HOUSE BILL 2542

AN ACT

AMENDING SECTION 38-842, ARIZONA REVISED STATUTES; AMENDING SECTION 38-844, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 91, SECTION 1; AMENDING SECTIONS 38-845, 38-849, 38-850, 38-857 AND 38-859, ARIZONA REVISED STATUTES; RELATING TO STATE RETIREMENT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-842, Arizona Revised Statutes, is amended to read:

38-842. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition which the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's job classification and was incurred in the performance of the employee's duty. ~~A finding of accidental disability shall be based on medical evidence by a doctor or clinic appointed by the local board pursuant to section 38-847, subsection D, paragraph 9 which establishes an accidental disability. Material conflicts in medical evidence shall be resolved by the findings of the local board.~~

2. "Accumulated contributions" means, for each member, the sum of the amount of the member's aggregate contributions made to the fund and the amount, if any, attributable to the employee's contributions prior to the member's effective date under another public retirement system, other than the federal social security act, and transferred to the fund minus the benefits paid to or on behalf of the member.

3. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the fund manager. The fund manager may from time to time change the mortality and interest assumptions.

4. "Average monthly benefit compensation" means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. The considered period shall be the three consecutive years within the last twenty completed years of credited service which yield the highest average. In the computation under this paragraph a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee's job classification if the employee was not on industrial leave.

5. "CATASTROPHIC DISABILITY" MEANS A PHYSICAL CONDITION THAT IS NOT AN ACCIDENTAL DISABILITY, THAT THE LOCAL BOARD DETERMINES PREVENTS THE EMPLOYEE FROM TOTALLY AND PERMANENTLY ENGAGING IN ANY GAINFUL EMPLOYMENT AND THAT RESULTS FROM A CATASTROPHIC PHYSICAL INJURY INCURRED IN THE PERFORMANCE OF THE EMPLOYEE'S DUTY.

~~5.~~ 6. "Certified peace officer" means a peace officer certified by the Arizona peace officers standards and training board.

~~6.~~ 7. "Claimant" means any member or beneficiary who files an application for benefits pursuant to this article.

1 ~~7.~~ 8. "Compensation" means, for the purpose of computing retirement
2 benefits, base salary, overtime pay, shift differential pay, and holiday pay
3 paid to an employee BY THE EMPLOYER on a regular monthly, semimonthly or
4 biweekly payroll basis and longevity pay paid to an employee at least every
5 six months for which contributions are made to the system pursuant to section
6 38-843, subsection D. Compensation does not include, for the purpose of
7 computing retirement benefits, payment for unused sick leave, payment in lieu
8 of vacation, payment for compensatory time or any other payment for fringe
9 benefits.

10 ~~8.~~ 9. "Credited service" means the member's total period of service
11 prior to the member's effective date of participation, plus those compensated
12 periods of the member's service thereafter for which the member made
13 contributions to the fund.

14 ~~9.~~ 10. "Depository" means a bank in which all monies of the system
15 are deposited and held and from which all expenditures for benefits, expenses
16 and investments are disbursed.

17 ~~10.~~ 11. "Effective date of participation" means July 1, 1968, except
18 with respect to employers and their covered employees whose contributions to
19 the fund commence thereafter, the effective date of their participation in
20 the system is as specified in the applicable joinder agreement.

21 ~~11.~~ 12. "Effective date of vesting" means the date a member's rights
22 to benefits vest pursuant to section 38-844.01.

23 ~~12.~~ 13. "Eligible child" means the unmarried child of a deceased
24 member who is under the age of eighteen or a full-time student who is under
25 the age of twenty-three or under a disability which began before the child
26 attained the age of twenty-three and who remains a dependent of the surviving
27 spouse or guardian.

28 ~~13.~~ 14. "Eligible groups" means only the following who are regularly
29 assigned to hazardous duty:

30 (a) Municipal police officers who are certified peace officers.

31 (b) Municipal fire fighters.

32 (c) Paid full-time fire fighters employed directly by a fire district
33 organized pursuant to section 48-803 or 48-804 with three or more full-time
34 fire fighters, but not including fire fighters employed by a fire district
35 pursuant to a contract with a corporation.

36 (d) State highway patrol officers who are certified peace officers.

37 (e) State fire fighters.

38 (f) County sheriffs and deputies who are certified peace officers.

39 (g) Fish and game wardens who are certified peace officers.

40 (h) Police officers who are certified peace officers and fire fighters
41 of a nonprofit corporation operating a public airport pursuant to sections
42 28-8423 and 28-8424. A police officer shall be designated pursuant to
43 section 28-8426 to aid and supplement state and local law enforcement
44 agencies and a fire fighter's sole duty shall be to perform fire fighting
45 services, including services required by federal regulations.

(i) Police officers who are certified peace officers and who are appointed by the Arizona board of regents.

(j) Police officers who are certified peace officers and who are appointed by a community college district governing board.

(k) State attorney general investigators who are certified peace officers.

(l) County attorney investigators who are certified peace officers.

(m) Police officers who are certified peace officers and who are employed by an Indian reservation police agency.

(n) Fire fighters who are employed by an Indian reservation fire fighting agency.

(o) Police officers who are certified peace officers and who are appointed by the department of administration.

(p) Department of liquor licenses and control investigators who are certified peace officers.

(q) Arizona department of agriculture officers who are certified peace officers.

(r) Arizona state parks board rangers and managers who are certified peace officers.

(s) County park rangers who are certified peace officers.

~~14.~~ 15. "Employee" means any person who is employed by a participating employer and who is a member of an eligible group but does not include any persons compensated on a contractual or fee basis. If an eligible group requires certified peace officer status and at the option of the local board, employee may include a person who is training to become a certified peace officer.

~~15.~~ 16. "Employers" means:

(a) Cities contributing to the fire fighters' relief and pension fund as provided in sections 9-951 through 9-971 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their full-time paid fire fighters.

(b) Cities contributing under the state police pension laws as provided in sections 9-911 through 9-934 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their municipal policemen.

(c) The state highway patrol covered under the state highway patrol retirement system.

(d) The state, or any political subdivision thereof, including but not limited to towns, cities, fire districts, counties and nonprofit corporations operating public airports pursuant to sections 28-8423 and 28-8424, which has elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

1 (e) Indian tribes which have elected to participate in the system on
2 behalf of an eligible group of public safety personnel pursuant to a joinder
3 agreement entered into after July 1, 1968.

4 ~~16.~~ 17. "Fund" means the public safety personnel retirement fund,
5 which is the fund established to receive and invest contributions accumulated
6 under the system and from which benefits are paid.

7 ~~17.~~ 18. "Fund manager" means the fund manager of the system, who are
8 the persons appointed to invest and operate the fund.

9 ~~18.~~ 19. "Local board" means the retirement board of the employer, who
10 are the persons appointed to administer the system as it applies to their
11 members in the system.

12 ~~19.~~ 20. "Member" means any employee who meets all of the following
13 qualifications:

14 (a) Who is either a full-time paid municipal police officer, a
15 full-time paid fire fighter, a law enforcement officer who is employed by the
16 state including the director thereof, a state fire fighter who is primarily
17 assigned to fire fighting duties, a fire fighter or police officer of a
18 nonprofit corporation operating a public airport pursuant to sections 28-8423
19 and 28-8424, all ranks designated by the Arizona law enforcement merit system
20 council, a state attorney general investigator who is a certified peace
21 officer, a county attorney investigator who is a certified peace officer, a
22 police officer who is appointed by the department of administration and who
23 is a certified peace officer, a department of liquor licenses and control
24 investigator who is a certified peace officer, an Arizona department of
25 agriculture officer who is a certified peace officer, an Arizona state parks
26 board ranger or manager who is a certified peace officer, a county park
27 ranger who is a certified peace officer, a person who is a certified peace
28 officer and who is employed by an Indian reservation police agency, a fire
29 fighter who is employed by an Indian reservation fire fighting agency or an
30 employee included in a group designated as eligible employees under a joinder
31 agreement entered into by their employer after July 1, 1968 and who is or was
32 regularly assigned to hazardous duty.

33 (b) Who, on or after the employee's effective date of participation,
34 is receiving compensation for personal services rendered to an employer or
35 would be receiving compensation except for an authorized leave of absence.

36 (c) Whose employment with an employer commenced prior to attainment
37 of age fifty.

38 (d) Whose customary employment is at least forty hours per week and
39 for more than six months in a calendar year.

40 (e) Who has not attained age sixty-five prior to the employee's
41 effective date of participation or who was over age sixty-five with
42 twenty-five years or more of service prior to the employee's effective date
43 of participation.

1 20. 21. "Normal retirement date" means the first day of the calendar
2 month immediately following an employee's completion of twenty years of
3 service or the employee's sixty-second birthday and the employee's completion
4 of fifteen years of service.

5 21. 22. "Ordinary disability" means a physical condition which the
6 local board determines will prevent an employee totally and permanently from
7 performing a reasonable range of duties within the employee's department or
8 a mental condition which the local board determines will prevent an employee
9 totally and permanently from engaging in any substantial gainful activity.

10 ~~A finding of ordinary disability shall be based on medical evidence by a~~
11 ~~doctor or clinic appointed by the local board pursuant to section 38-847,~~
12 ~~subsection D, paragraph 9 satisfactory to the local board which establishes~~
13 ~~an ordinary disability. Material conflicts in medical evidence shall be~~
14 ~~resolved by the findings of the local board.~~

15 22. 23. "Pension" means a series of monthly amounts which are payable
16 to a person who is entitled to receive benefits under the plan.

17 23. 24. "Regularly assigned to hazardous duty" means regularly
18 assigned to duties of the type normally expected of municipal police
19 officers, municipal or state fire fighters, eligible fire district fire
20 fighters, state highway patrol officers, county sheriffs and deputies, fish
21 and game wardens, fire fighters and police officers of a nonprofit
22 corporation operating a public airport pursuant to sections 28-8423 and
23 28-8424, police officers who are appointed by the Arizona board of regents
24 or a community college district governing board, state attorney general
25 investigators who are certified peace officers, county attorney investigators
26 who are certified peace officers, police officers who are appointed by the
27 department of administration and who are certified peace officers, department
28 of liquor licenses and control investigators who are certified peace
29 officers, Arizona department of agriculture officers who are certified peace
30 officers, Arizona state parks board rangers and managers who are certified
31 peace officers, county park rangers who are certified peace officers, police
32 officers who are certified peace officers and are employed by an Indian
33 reservation police agency or fire fighters who are employed by an Indian
34 reservation fire fighting agency. Those individuals who are assigned solely
35 to support duties such as secretaries, stenographers, clerical personnel,
36 clerks, cooks, maintenance personnel, mechanics and dispatchers are not
37 assigned to hazardous duty regardless of their position classification
38 title. Since the normal duties of municipal police officers, municipal or
39 state fire fighters, eligible fire district fire fighters, state highway
40 patrol officers, county sheriffs and deputies, fish and game wardens, fire
41 fighters and police officers of a nonprofit corporation operating a public
42 airport pursuant to sections 28-8423 and 28-8424, police officers who are
43 appointed by the Arizona board of regents or a community college district
44 governing board, state attorney general investigators who are certified peace
45 officers, county attorney investigators who are certified peace officers,

1 police officers who are appointed by the department of administration and who
2 are certified peace officers, department of liquor licenses and control
3 investigators who are certified peace officers, Arizona department of
4 agriculture officers who are certified peace officers, Arizona state parks
5 board rangers and managers who are certified peace officers, county park
6 rangers who are certified peace officers, police officers who are certified
7 peace officers and are employed by an Indian reservation police agency and
8 fire fighters who are employed by an Indian reservation fire fighting agency
9 are constantly changing, questions as to whether a person is or was
10 previously regularly assigned to hazardous duty shall be resolved by the
11 local board on a case-by-case basis. Resolutions by local boards are subject
12 to rehearing and appeal.

13 ~~24.~~ 25. "Retirement" means termination of employment after a member
14 has fulfilled all requirements for a pension. Retirement shall be considered
15 as commencing on the first day of the month immediately following a member's
16 last day of employment or authorized leave of absence, if later.

17 ~~25.~~ 26. "Service" means the last period of continuous employment of
18 an employee by the employers prior to the employee's retirement or the
19 employee's sixty-fifth birthday, whichever first occurs, except that if such
20 period includes employment during which the employee would not have qualified
21 as a member had the system then been effective, such as employment as a
22 volunteer fire fighter, then only twenty-five per cent of such noncovered
23 employment shall be considered as service. Any absence which is authorized
24 by an employer shall not be considered as interrupting continuity of
25 employment if the employee returns within the period of authorized absence.
26 Transfers between employers also shall not be considered as interrupting
27 continuity of employment. Any period during which a member is receiving sick
28 leave payments or a temporary disability pension shall be considered as
29 service. Any period during which a person was employed as a full-time paid
30 fire fighter by a fire district pursuant to a contract with a corporation
31 within that fire district shall be considered as service if it is part of the
32 person's last period of continuous employment with that corporation in that
33 fire district and the fire district has elected to treat the period as
34 service in its applicable joinder agreement. Any reference in this system
35 to the number of years of service of an employee shall be deemed to include
36 fractional portions of a year.

37 ~~26.~~ 27. "State" means the state of Arizona, including any department,
38 office, board, commission, agency or other instrumentality of the state.

39 ~~27.~~ 28. "System" means the public safety personnel retirement system
40 established by this article.

41 ~~28.~~ 29. "Temporary disability" means a physical or mental condition
42 which the local board finds totally and temporarily prevents an employee from
43 performing a reasonable range of duties within the employee's department and
44 which was incurred in the performance of the employee's duty. ~~A finding of~~
45 ~~disability shall be based on medical evidence by a doctor or clinic appointed~~

1 ~~by the local board pursuant to section 38-847, subsection D, paragraph 9~~
2 ~~which establishes a temporary disability. Material conflicts in medical~~
3 ~~evidence shall be resolved by the findings of the local board.~~

4 Sec. 2. Section 38-844, Arizona Revised Statutes, as amended by Laws
5 2004, chapter 91, section 1, is amended to read:

6 38-844. Requirements for retirement benefits and disability
7 pensions

8 A. A member shall be eligible for a normal pension upon retirement on
9 or after the member's normal retirement date. Payment of a normal pension
10 shall commence as of the first day of the month following the date of
11 retirement, and the last payment shall be made as of the last day of the
12 month in which the death of the retired member occurs.

13 B. A member is eligible for an accidental disability pension if the
14 member's employment is terminated by reason of accidental disability. A
15 member is eligible for an ordinary disability pension if the member's
16 employment is terminated before the member's normal retirement date by reason
17 of ordinary disability. A member shall file an application for a disability
18 pension after the disabling incident or within one year after the date the
19 member ceases to be an employee. Timely application for an accidental,
20 CATASTROPHIC or ordinary disability pension is a prerequisite to receipt of
21 the pension. Payment of an accidental, CATASTROPHIC or ordinary disability
22 pension shall commence as of the first day of the month following the date
23 of retirement or the expiration of a period during which the member is
24 receiving sick leave payments or a temporary disability pension, whichever
25 is later. The last payment shall be made as of the last day of the month in
26 which the death of the retired member occurs, or if disability ceases prior
27 to the member's normal retirement date, the first day of the month in which
28 disability ceases.

29 C. A MEMBER IS ELIGIBLE FOR A CATASTROPHIC DISABILITY PENSION IF THE
30 MEMBER'S EMPLOYMENT IS TERMINATED BY REASON OF CATASTROPHIC DISABILITY. IF
31 MORE THAN THE ALLOWABLE CATASTROPHIC DISABILITY PENSIONS ARE APPROVED BY THE
32 LOCAL BOARDS IN A CALENDAR YEAR, FROM AND AFTER DECEMBER 31 OF THE FOLLOWING
33 CALENDAR YEAR A MEMBER OF THE SYSTEM IS NOT ELIGIBLE TO APPLY FOR A
34 CATASTROPHIC DISABILITY PENSION. ON OR BEFORE JANUARY 31, THE FUND MANAGER
35 SHALL REPORT TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
36 REPRESENTATIVES THE NUMBER OF CATASTROPHIC DISABILITY PENSIONS THAT WERE
37 APPROVED BY THE LOCAL BOARDS IN THE PRECEDING CALENDAR YEAR. FOR THE
38 PURPOSES OF THIS SUBSECTION, "ALLOWABLE CATASTROPHIC DISABILITY PENSIONS"
39 MEANS FOR CALENDAR YEAR 2004, TEN, AND FOR SUBSEQUENT CALENDAR YEARS THE
40 NUMBER OF ALLOWABLE CATASTROPHIC DISABILITY PENSIONS ALLOWED IN THE PRIOR
41 CALENDAR YEAR MINUS THE NUMBER OF CATASTROPHIC DISABILITY PENSIONS APPROVED
42 BY THE LOCAL BOARDS IN THE PRIOR CALENDAR YEAR PLUS FOUR.

43 ~~C.~~ D. Notwithstanding any other provision of this section, no member
44 shall qualify for an accidental, CATASTROPHIC or ordinary disability pension

1 if the local board determines that the member's disability results from the
2 following:

3 1. An injury suffered while engaged in a felonious criminal act or
4 enterprise.

5 2. Service in the armed forces of the United States which entitles the
6 member to a veteran's disability pension.

7 3. A physical or mental condition or injury that existed or occurred
8 prior to the member's date of membership in the system.

9 ~~D.~~ E. Accidental or ordinary disability shall be considered to have
10 ceased and an accidental or ordinary disability pension terminates if the
11 member:

12 1. Has sufficiently recovered, in the opinion of the local board,
13 based on a medical examination by a doctor PHYSICIAN or clinic appointed by
14 the local board, to be able to engage in a reasonable range of duties within
15 the member's department and the member refuses an offer of employment by an
16 employer in the system.

17 2. Refuses to undergo any medical examination requested by the board,
18 provided that a medical examination shall not be required more frequently
19 than once in any calendar year.

20 F. SIXTY MONTHS AFTER THE AWARD OF A CATASTROPHIC DISABILITY PENSION,
21 THE LOCAL BOARD SHALL REEVALUATE THE MEMBER. IF THE MEMBER STILL QUALIFIES
22 FOR THE CATASTROPHIC DISABILITY PENSION, THE MEMBER IS ENTITLED TO CONTINUE
23 TO RECEIVE THE PENSION AT THE REDUCED AMOUNT PRESCRIBED IN SECTION 38-845,
24 SUBSECTION E. A CATASTROPHIC DISABILITY SHALL BE CONSIDERED TO HAVE CEASED
25 AND A CATASTROPHIC DISABILITY PENSION TERMINATES IF THE LOCAL BOARD
26 DETERMINES THAT THE MEMBER HAS SUFFICIENTLY RECOVERED AND IS ABLE TO ENGAGE
27 IN GAINFUL EMPLOYMENT BASED ON A MEDICAL EXAMINATION BY A PHYSICIAN OR A
28 CLINIC APPOINTED BY THE LOCAL BOARD. AFTER THE SIXTY MONTH REVIEW, THE
29 CATASTROPHIC DISABILITY SHALL BE CONSIDERED TO HAVE CEASED AND A CATASTROPHIC
30 DISABILITY PENSION TERMINATES IF THE LOCAL BOARD DETERMINES THAT THE MEMBER
31 HAS SUFFICIENTLY RECOVERED AND IS ABLE TO ENGAGE IN GAINFUL EMPLOYMENT BASED
32 ON A MEDICAL EXAMINATION BY A PHYSICIAN OR A CLINIC APPOINTED BY THE LOCAL
33 BOARD, EXCEPT THAT THE MEDICAL EXAMINATION SHALL NOT BE REQUIRED MORE
34 FREQUENTLY THAN ONCE IN A CALENDAR YEAR. THE MEDICAL REVIEW AFTER THE SIXTY
35 MONTH PERIOD DOES NOT APPLY AFTER THE DATE THE CATASTROPHIC DISABILITY
36 PENSIONER WOULD HAVE ATTAINED TWENTY-FIVE YEARS OF SERVICE ASSUMING THE
37 PENSIONER REMAINED A MEMBER OF THE SYSTEM. THE LOCAL BOARD SHALL ALSO
38 TERMINATE A CATASTROPHIC DISABILITY PENSION IF THE MEMBER REFUSES TO UNDERGO
39 ANY MEDICAL EXAMINATION REQUESTED BY THE BOARD. A MEMBER WHOSE CATASTROPHIC
40 DISABILITY PENSION IS TERMINATED MAY APPLY FOR AND IF ELIGIBLE IS ENTITLED
41 TO RECEIVE AN ACCIDENTAL DISABILITY PENSION AS PROVIDED IN THIS SECTION.

42 ~~E.~~ G. Subsection ~~D.~~ E of this section does not apply after a
43 disability pensioner's normal retirement date. The amount of a disability
44 pension shall not be recomputed at a disability pensioner's normal retirement
45 date.

1 ~~F.~~ H. An ordinary disability pension shall be reduced in the period
2 prior to the member's normal retirement date if the member engages in any
3 employment and if the member's income from this employment is greater than
4 the member's pension unreduced by this subsection. The amount of the
5 reduction shall be equal to the difference between the member's income from
6 employment and the member's unreduced pension. The local board shall have
7 the right to suspend payments of an ordinary disability pension if the
8 disabled member fails to report earned income. Such suspension shall be for
9 the period there is no satisfactory report with restoration of benefits upon
10 acceptance of such report or until the member's normal retirement date,
11 whichever occurs earlier. If, in the opinion of the local board, the
12 reduction provided in this subsection is insufficient to recover monies
13 previously paid to a member, each local board may, in its sole discretion,
14 MAY bring an action to recover any outstanding balance due, notwithstanding
15 any other rights the local board possesses.

16 ~~G.~~ I. If accidental or ordinary disability ceases before a retired
17 member attains the member's normal retirement date and the member is
18 reemployed by an employer, the pension payable upon the member's subsequent
19 retirement shall be determined as provided in section 38-849, subsection D.

20 ~~H.~~ J. A member shall be eligible for a temporary disability pension
21 if the member's employment is terminated prior to the member's normal
22 retirement date by reason of temporary disability. Payment of a temporary
23 disability pension shall commence as of the first day of the month following
24 the date of disability or the expiration of a period during which the member
25 is receiving compensation and sick leave payments, whichever is later. The
26 last payment shall be made as of the first day of the month in which either
27 the death of the member occurs or the local board deems the member is no
28 longer under temporary disability, whichever first occurs, provided that no
29 more than twelve monthly temporary disability payments shall be made in total
30 to the member.

31 ~~I.~~ K. If upon the expiration of a temporary disability pension the
32 local board finds upon application that the member has an accidental or
33 ordinary disability, the member shall be eligible for an accidental or
34 ordinary disability pension, as provided in this section.

35 Sec. 3. Section 38-845, Arizona Revised Statutes, is amended to read:

36 38-845. Amount of retirement benefit; purchase of firearm

37 A. A member who meets the requirements for a normal pension and has
38 twenty years of credited service shall receive a monthly amount which equals
39 fifty per cent of the member's average monthly benefit compensation. If the
40 member retires with other than twenty years of credited service, the
41 foregoing amount shall be:

42 1. Reduced by four per cent for each year of credited service under
43 twenty years, with pro rata reduction for any fractional year.

2. Increased by a monthly amount equal to two per cent of the member's average monthly benefit compensation multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year, except that if a member retires with twenty-five or more years of credited service the amount shall be increased by a monthly amount equal to two and one-half per cent of the member's average monthly benefit compensation multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year. Notwithstanding the provisions of this subsection, the maximum amount payable as a normal pension shall be eighty per cent of the average monthly benefit compensation.

B. A member who meets the requirements for an accidental disability pension shall receive a monthly amount which shall be computed in the same manner as a normal pension, using the member's average monthly benefit compensation before termination of employment and the member's actual credited service or twenty years of credited service, whichever is greater.

C. A member who meets the requirements for an ordinary disability pension shall receive a monthly amount that is equal to a fraction times the member's normal pension that is computed according to subsection A if the member had twenty years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty years of credited service, by twenty.

D. A member who meets the requirements for a temporary disability pension shall receive a monthly amount which shall be equal to one-twelfth of fifty per cent of the member's annual compensation received immediately prior to the date on which the member's disability was incurred.

E. A MEMBER WHO MEETS THE REQUIREMENTS FOR A CATASTROPHIC DISABILITY PENSION IS ENTITLED TO RECEIVE A MONTHLY AMOUNT COMPUTED AS FOLLOWS:

1. FOR THE FIRST SIXTY MONTHS, NINETY PER CENT OF THE MEMBER'S AVERAGE MONTHLY BENEFIT COMPENSATION BEFORE TERMINATION OF EMPLOYMENT.

2. AFTER SIXTY MONTHS, SIXTY-TWO AND ONE-HALF PER CENT OF THE MEMBER'S AVERAGE MONTHLY BENEFIT COMPENSATION BEFORE TERMINATION OF EMPLOYMENT OR COMPUTED IN THE SAME MANNER AS A NORMAL PENSION USING THE MEMBER'S AVERAGE MONTHLY BENEFIT COMPENSATION BEFORE TERMINATION OF EMPLOYMENT AND THE MEMBER'S ACTUAL CREDITED SERVICE, WHICHEVER IS GREATER.

F. A member who was employed before September 15, 1989 by an employer participating in the system and who retires on or after November 1, 2001 is entitled to receive a tax equity benefit allowance consisting of a permanent increase of two per cent of the member's base benefit retroactive to the day of retirement.

G. In addition to the amounts received under subsection A, B, C, or D OR E and subject to the approval of the employer, the pension includes the ability of a member to purchase the handgun or shotgun issued by the employer to the member at less than fair market value.

1 Sec. 4. Section 38-849, Arizona Revised Statutes, is amended to read:
2 38-849. Limitations on receiving pension; violation;
3 classification; reemployment after severance;
4 reinstatement of service credits; reemployment of
5 retired or disabled member

6 A. If a member is CONVICTED OF, OR discharged because of, theft,
7 embezzlement, fraud or misappropriation of an employer's property OR PROPERTY
8 UNDER THE CONTROL OF THE EMPLOYER, the member shall ~~not be entitled to~~
9 ~~receive a pension regardless of the member's age and service on the date of~~
10 ~~the member's discharge. Instead, the member shall receive a lump sum payment~~
11 ~~equal to the member's accumulated contributions as of the date of the~~
12 ~~member's discharge~~ BE SUBJECT TO RESTITUTION AND FINES IMPOSED BY A COURT OF
13 COMPETENT JURISDICTION. THE COURT MAY ORDER THE RESTITUTION OR FINES BE PAID
14 FROM ANY PAYMENTS OTHERWISE PAYABLE TO THE MEMBER FROM THE RETIREMENT SYSTEM.

15 B. A person who knowingly makes any false statement or who falsifies
16 or permits to be falsified any record of the system with an intent to defraud
17 the system is guilty of a class 6 felony. If any change or error in the
18 records results in any member or beneficiary receiving from the system more
19 or less than the member or beneficiary would have been entitled to receive
20 had the records been correct, the local board shall correct such error, and
21 as far as practicable shall adjust the payments in such manner that the
22 actuarial equivalent of the benefit to which such member or beneficiary was
23 correctly entitled shall be paid. If a member is convicted of a crime
24 specified in this subsection the member shall be entitled to receive a lump
25 sum payment of the member's accumulated contributions but forfeits any future
26 compensation and benefits which would otherwise accrue to the member or the
27 member's estate under this article.

28 C. If a member who received a severance refund upon termination of
29 employment, as provided in section 38-846.02, is subsequently reemployed by
30 an employer, the member's prior service credits shall be cancelled and
31 service shall be credited only from the date the member's most recent
32 reemployment period commenced. ~~Notwithstanding the foregoing~~ HOWEVER, if
33 such THE former member's reemployment with the same employer occurred within
34 two years after the former member's termination date, and, within ninety days
35 after reemployment the former member signs a written election consenting to
36 reimburse the fund within one year, the former member shall be required to
37 redeposit the amount withdrawn at the time of the former member's separation
38 from service, with interest thereon at the rate of nine per cent for each
39 year compounded each year from the date of withdrawal to the date of
40 repayment. Upon satisfaction of this obligation the member's prior service
41 credits shall be reinstated.

42 D. If a retired member is reemployed by an employer, no contributions
43 shall be made on the retired member's account, nor any service credited,
44 during the period of such reemployment. In addition, if a retired member
45 subsequently becomes employed in the same position by the employer from which

1 the member retired, the system shall not make pension payments to the retired
2 member during the period of reemployment. On subsequent termination of
3 employment by the retired member, the retired member is entitled to receive
4 a pension based on the member's service and compensation before the date of
5 the member's reemployment. If a member who retired under disability is
6 reemployed by an employer as an employee, that member shall be treated as if
7 the member had been on an uncompensated leave of absence during the period
8 of the member's disability retirement and shall be a contributing member of
9 the system.

10 Sec. 5. Section 38-850, Arizona Revised Statutes, is amended to read:

11 38-850. Assurances and liabilities; fund manager discretion;
12 overpayments; underpayments

13 A. Nothing contained in the system shall be construed as a contract
14 of employment between an employer and any employee, or as a right of any
15 employee to be continued in the employment of an employer, or as a limitation
16 of the rights of an employer to discharge any of its employees, with or
17 without cause.

18 B. No employee shall have any right to, or interest in, any assets of
19 the fund upon termination of his employment or otherwise, except as provided
20 from time to time under the system, and then only to the extent of the
21 benefits payable to such employee out of the assets of the fund. All
22 payments of benefits as provided for in the system shall be made solely out
23 of the assets of the fund and neither the employers, the fund manager, nor
24 any member of the board shall be liable therefor in any manner.

25 C. Benefits, employee contributions or employer contributions,
26 including interest, earnings and all other credits, payable under this system
27 shall not be subject in any manner to anticipation, alienation, sale,
28 transfer, assignment, pledge, encumbrance, charge, garnishment, execution or
29 levy of any kind, either voluntary or involuntary, prior to actually being
30 received by the person entitled to the benefit, contribution, earning or
31 credit, under the terms of the system, and any attempt to anticipate,
32 alienate, sell, transfer, assign, pledge, encumber, charge or otherwise
33 dispose of any such right hereunder shall be void. The fund shall not in any
34 manner be liable for, or subject to, the debts, contracts, liabilities,
35 engagements or torts of any person entitled to such rights hereunder. This
36 subsection does not preclude arrangements for the withholding of taxes from
37 benefit payments, arrangements for the recovery of benefit overpayments,
38 arrangements for the transfer of benefit rights to another plan or
39 arrangements for direct deposit of benefit payments in an account in a bank,
40 savings and loan association or credit union if the arrangement is not part
41 of an arrangement constituting an assignment or alienation.

42 D. Neither the employers, the fund manager, nor any member of a local
43 board guarantees the fund in any manner against loss or depreciation, and
44 none of them shall be liable for any act or failure to act, which is made in
45 good faith pursuant to the provisions of the system. The employers shall not

1 be responsible for any act or failure to act of a local board or any of its
2 members or for any act or failure to act of the fund manager. A local board
3 and the individual members thereof shall not be responsible for any act or
4 failure to act of any employer or the fund manager.

5 E. The fund manager may, in its discretion, make payment to a person
6 entitled to any payment under the system who is under a legal disability in
7 any one or more of the following ways:

- 8 1. Directly to such person.
- 9 2. To his legal guardian or conservator.
- 10 3. To his spouse or to any other person charged with his support to
11 be expended for his benefit.

12 F. If, through misstatement or computation error, benefits are
13 underpaid or overpaid, there is no liability for any more than the correct
14 benefit sums under the system. Overpayments may be deducted from future
15 payments under the system, and underpayments may be added to future payments
16 under the system. A member or other benefit recipient may elect to repay in
17 a lump sum any overpayment in lieu of receiving reduced benefits under the
18 system.

19 G. Nothing in this section exempts employee benefits of any kind from
20 a writ of attachment, a writ of execution, a writ of garnishment and orders
21 of assignment issued by a court of record which are the result of a judgment
22 taken for arrearages for child support or for a child support debt OR
23 RESTITUTION OR FINES IMPOSED IN ACCORDANCE WITH SECTION 38-849, SUBSECTION A.

24 Sec. 6. Section 38-857, Arizona Revised Statutes, is amended to read:

25 38-857. Group health and accident coverage for retired members;
26 payment; definition

27 A. The fund manager of the public safety personnel retirement system
28 shall pay part of the single coverage premium of any group health and
29 accident insurance for each retired member or survivor of the system who
30 receives a pension and who has elected to participate in the coverage
31 provided by section 38-651.01 or 38-782 or any other health and accident
32 insurance coverage provided or administered by a participating employer of
33 the system. The fund manager shall pay up to:

- 34 1. One hundred fifty dollars per month for each retired member or
35 survivor of the system who is not eligible for medicare.
- 36 2. One hundred dollars per month for each retired member or survivor
37 of the system who is eligible for medicare.

38 B. The fund manager of the system shall pay from assets of the fund
39 part of the family coverage premium of any group health and accident
40 insurance each month for a benefit recipient who elects family coverage and
41 otherwise qualifies for payment pursuant to subsection A of this
42 section. The fund manager shall pay up to:

- 43 1. Two hundred sixty dollars per month if the retired member or
44 survivor of the system and one or more dependents are not eligible for
45 medicare.

1 2. One hundred seventy dollars per month if the retired member or
2 survivor of the system and one or more dependents are eligible for medicare.

3 3. Two hundred fifteen dollars per month if either:

4 (a) The retired member or survivor of the system is not eligible for
5 medicare and one or more dependents are eligible for medicare.

6 (b) The retired member or survivor of the system is eligible for
7 medicare and one or more dependents are not eligible for medicare.

8 C. The fund manager shall not pay from assets of the fund more than
9 the amount prescribed in this section for a benefit recipient as a member or
10 survivor of the system.

11 D. This section does not apply to a retired member or survivor of the
12 system who is reemployed by this state or a political subdivision of this
13 state and who participates in coverage provided by this state or a political
14 subdivision of this state as an active employee.

15 E. In addition to the payments provided by subsection A of this
16 section, through June 30, 2005, the fund manager shall pay an insurance
17 premium benefit for medical coverage, not including limited benefit coverage
18 as defined in section 20-1137, for each retired member or survivor of the
19 system who is entitled to a premium benefit payment pursuant to subsection
20 A of this section and who lives in a nonservice area as follows:

21 1. Up to three hundred dollars per month for a retired member or
22 survivor of the system who is not eligible for medicare. From and after June
23 30, 2003, to qualify for this additional benefit, a retired member or
24 survivor shall pay out-of-pocket medical insurance premiums of at least one
25 hundred twenty-five dollars per month.

26 2. Up to one hundred seventy dollars per month for a retired member
27 or survivor of the system who is eligible for medicare. From and after June
28 30, 2003, to qualify for this additional benefit, a retired member or
29 survivor shall pay out-of-pocket medical insurance premiums of at least One
30 hundred dollars per month.

31 F. In addition to the payments provided by subsection B of this
32 section, through June 30, 2005, the fund manager shall pay an insurance
33 premium benefit for medical coverage, not including limited benefit coverage
34 as defined in section 20-1137, for a retired member or survivor of the system
35 who is entitled to a premium benefit payment pursuant to subsection B of this
36 section, who is enrolled in a family medical plan and who lives in a
37 nonservice area as follows:

38 1. Up to six hundred dollars per month if the retired member or
39 survivor of the system and one or more dependents are not eligible for
40 medicare. From and after June 30, 2003, to qualify for this additional
41 benefit, a retired member or survivor shall pay out-of-pocket medical
42 insurance premiums of at least four hundred twenty-five dollars per month.

43 2. Up to three hundred fifty dollars per month if the retired member
44 or survivor of the system and one or more dependents are eligible for
45 medicare. From and after June 30, 2003, to qualify for this additional

benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least two hundred dollars per month.

3. Up to four hundred seventy dollars per month if either:

(a) The retired member or survivor of the system is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the system is eligible for medicare and one or more dependents are not eligible for medicare.

From and after June 30, 2003, to qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least four hundred dollars per month.

G. A retired member or survivor of the system who is enrolled in a managed care program in a nonservice area is not eligible for the payment prescribed in subsection E or F of this section if the member terminates coverage under the managed care program.

H. A retired member or survivor of the system may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's employer. ~~if that employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the system~~ IF THE RETIRED MEMBER OR SURVIVOR MAKES THE ELECTION UNDER THIS SUBSECTION, THE RETIRED MEMBER'S EMPLOYER SHALL PROVIDE THE ADMINISTRATIVE FUNCTIONS ASSOCIATED WITH THE PAYMENT, INCLUDING VERIFICATION THAT THE PAYMENT IS USED TO PAY FOR HEALTH INSURANCE. THE RETIREE IS RESPONSIBLE FOR PROVIDING THE WRITTEN EVIDENCE OF COVERAGE TO THE EMPLOYER. ELIGIBILITY FOR AND PAYMENT OF THE SUBSIDY SHALL BEGIN ON THE LAST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE WRITTEN EVIDENCE IS RECEIVED BY THE EMPLOYER. THE EMPLOYER IS NOT RESPONSIBLE FOR MAKING, AND IS NOT OBLIGATED TO MAKE, RETROACTIVE SUBSIDY PAYMENTS TO THE INSURANCE CARRIER IF THE RETIREE DOES NOT SUPPLY THE WRITTEN EVIDENCE OF COVERAGE IN A TIMELY MANNER. THE PAYMENT ALLOWED PURSUANT TO THIS SUBSECTION IS LIMITED TO NO MORE THAN TWENTY-FIVE DOLLARS PER MONTH.

I. For the purposes of this section, "nonservice area" means an area ~~in this state~~ in which the Arizona state retirement system pursuant to section 38-782, the department of administration pursuant to section 38-651.01 or the member's or survivor's participating employer does not provide or administer a health care services organization program, excluding any preferred provider organization program or individual health indemnity policy, for which the retired member or survivor of the system is eligible.

Sec. 7. Section 38-859, Arizona Revised Statutes, is amended to read:

38-859. Medical boards; purposes; composition; medical examinations

A. The purposes of a medical board are to:

1. Identify a physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system and for which benefits may otherwise be limited by section 38-844, subsection C- D.

2. Evaluate a member's eligibility for an accidental disability pension.

3. Evaluate a member's eligibility for an ordinary disability pension.

4. Evaluate a member's eligibility for a temporary disability pension.

5. EVALUATE A MEMBER'S ELIGIBILITY FOR A CATASTROPHIC DISABILITY PENSION.

B. For the purpose of determining a disability, the medical board shall be composed of a designated physician or a clinic other than the employer's regular employee or contractee. Employees employed after October 1, 1992 shall undergo a medical examination for the purpose of identifying a physical or mental condition or injury that existed or occurred prior to a member's date of membership in the system and for which benefits may otherwise be limited by section 38-844, subsection C— D, and for this purpose, the medical board shall be composed of a designated physician or a clinic that may be the employer's regular employee or contractee.

C. A FINDING OF ACCIDENTAL, ORDINARY, TEMPORARY OR CATASTROPHIC DISABILITY SHALL BE BASED ON MEDICAL EVIDENCE BY A PHYSICIAN OR CLINIC APPOINTED BY THE LOCAL BOARD PURSUANT TO SECTION 38-847, SUBSECTION D, PARAGRAPH 9 THAT ESTABLISHED THE DISABILITY. THE LOCAL BOARD SHALL RESOLVE MATERIAL CONFLICTS IN MEDICAL EVIDENCE. If required, THE LOCAL BOARD MAY EMPLOY other physicians ~~may be employed~~ OR CLINICS to report on special cases. WITH THE APPROVAL OF THE LOCAL BOARD, A PHYSICIAN OR CLINIC EMPLOYED BY THE LOCAL BOARD MAY EMPLOY OCCUPATIONAL SPECIALISTS TO ASSIST THE PHYSICIAN OR CLINIC IN RENDERING AN OPINION.

~~C.~~ D. All employees shall undergo medical examinations before a physician or clinic appointed by the local board pursuant to and for the reasons prescribed in this article. An employee who fails to comply with this subsection waives all rights to disability benefits under this article.

~~D.~~ E. The examining doctor PHYSICIAN or clinic shall report the results of examinations to the local board, and the secretary of the local board shall preserve the report as a permanent record. Medical examinations conducted pursuant to this article shall not be conducted or utilized for the purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to the receipt of or qualification for pension benefits or service credits under the system.

~~E.~~ F. This section does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

Sec. 8. Legislative council study on retiree health insurance; contract; scope of study; reimbursement of costs; report

A. The legislative council shall select and contract with a private entity to conduct a study on retiree health insurance. The Arizona state retirement system shall make recommendations to the legislative council on

1 the selection of the contracted private entity and approve the cost of the
2 study. The study shall include:

3 1. The feasibility and cost impact to this state and all state
4 employees and political subdivisions of allowing all retired and disabled
5 members and their dependents of the Arizona state retirement system, the
6 public safety personnel retirement system, the corrections officer retirement
7 plan and the elected officials' retirement plan to participate in the health
8 insurance program that is administered by the department of administration
9 for state employees. The cost impact shall consider immediate and future
10 costs and cost shifting to all affected parties.

11 2. The feasibility and cost impact to this state and retirees of
12 establishing a single health insurance program for all retirees of these
13 groups. The study shall provide information, including costs and benefits,
14 from at least five other states that administer a single retiree health
15 insurance plan. The cost impact shall consider immediate and future costs
16 and cost shifting to all affected parties.

17 3. The feasibility and cost impact to this state and its public
18 employers of requiring all public employers to allow their retirees who are
19 under sixty-five years of age to remain in the same health insurance plan as
20 their active employees. The study shall provide cost data from at least ten
21 public employers in this state representing a range of size, geographic
22 locations and political jurisdictions. The cost impact shall consider
23 immediate and future costs and cost shifting to all affected parties.

24 4. The feasibility of dedicating an existing part of the retirement
25 contribution rate or a portion of an increased contribution rate to defray
26 part of the cost of health insurance premium payments, including a
27 recommendation for the amount that should be dedicated. The cost impact
28 shall consider immediate and future costs and cost shifting to all affected
29 parties.

30 5. A review of the contribution rates and benefits under this state's
31 retirement systems compared with the national average and other state
32 retirement systems.

33 6. An analysis of any federal or state legal restrictions on any of
34 the recommendations.

35 B. The system administrators of the four retirement systems or plans
36 shall provide any requested information to the private entity. The Arizona
37 state retirement system shall reimburse the legislative council from their
38 administrative funds for the cost of the study within thirty days after the
39 request of the legislative council.

40 C. The contract shall specify that the private entity shall submit a
41 report to the governor, the speaker of the house of representatives, the
42 president of the senate, the members of the senate finance committee and the
43 members of the house government and retirement committee on or before
44 December 1, 2004 and provide a copy of this report to the secretary of state
45 and the director of the Arizona state library, archives and public records.

1 Sec. 9. Retiree health insurance reporting requirement

2 The administrator of the public safety personnel retirement system, the
3 corrections officer retirement plan and the elected officials' retirement
4 plan shall provide a copy of the final report of its health insurance study
5 that commenced in February of 2004 to the governor, the president of the
6 senate, the speaker of the house of representatives, the members of the
7 senate finance committee, the members of the house government and retirement
8 committee, the secretary of state and the director of the Arizona state
9 library, archives and public records.

10 Sec. 10. Delayed repeal

11 Section 8 of this act, relating to the legislative council study on
12 retiree health insurance and section 9 of this act, relating to retiree
13 health insurance reporting requirements, are repealed from and after
14 September 30, 2005.

15 Sec. 11. Continuation of catastrophic disability pension

16 Any person who has been awarded a catastrophic disability pension
17 pursuant to this act is entitled to continue to receive the pension as long
18 as the person maintains eligibility as determined by the local board.

19 Sec. 12. Effective date

20 Section 38-857, Arizona Revised Statutes, as amended by this act, is
21 effective from and after June 30, 2008.

22 Sec. 13. Existing payments through an employer

23 Any employer assuming the administrative functions associated with a
24 health insurance subsidy payment pursuant to section 38-857, subsection H,
25 Arizona Revised Statutes, prior to June 30, 2008, may continue these
26 payments.

APPROVED BY THE GOVERNOR JUNE 3, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 3, 2004.

Passed the House March 10, 2004

Passed the Senate May 25, 2004

by the following vote: 56 Ayes,

by the following vote: 29 Ayes,

4 Nays, 0 Not Voting

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Ken Bennett
President of the Senate

Gorman L. Fyfe
Chief Clerk of the House

Charmine B. Dwyer
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

H.B. 2542

HOUSE FINAL PASSAGE

as per Joint Conference

Passed the House May 26, 2004

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE

as per Joint Conference

Passed the Senate May 26, 2004

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

Klu Blument
President of the Senate

Charmian Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA

OFFICE OF GOVERNOR

This Bill was received by the Governor

this 27th day of May, 2004

at 8:35 o'clock a M.

Jennifer Upbarra
Secretary to the Governor

Approved this 3 day of

June, 20 04,

at 3:45 o'clock P. M.

J. T. Rynell
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA

OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 3 day of June, 2004,

at 4:22 o'clock P. M.

Janice L. Brewer
Secretary of State

H.B. 2542